

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated July 9, 2008, (hereinafter Office Action) have been considered but are believed to be improper. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant respectfully traverses each of the § 103(a) rejections, each of which is based upon a combination of the teachings of Nakatsuyama with those of U.S. Patent No. 7,076,202 to Billmaier (hereinafter “Billmaier”), because the asserted references alone, or in combination, do not teach or suggest each of the claimed limitations. Specifically, neither of the asserted references teaches presenting a received content item during the presentation of the related broadcasted broadcast media stream at the given moment in time determined based on the attachment of the content item to the broadcasting time line, as claimed in each of the independent claims. For example, the asserted content item of Nakatsuyama (index data) is not presented at any time in a user terminal, and the asserted content item of Billmaier (electronic program guide EPG) is not presented at a time based on the attachment of the EPG to a broadcasting time line. To illustrate the misalignment of the claim limitations at page three of the Office Action, the limitations (using Claim 1) are paired in the following chart with the asserted teachings.

Claim 1 Limitations	Nakatsuyama	Billmaier
content item	index data	EPG
sending the content item on a channel parallel to the channel used for broadcasting the broadcast media stream		
presenting the content item during the presentation of the broadcasted broadcast media stream	index signal is broadcasted, but not presented (Col. 7, lines 57-65)	EPG is displayed in response to a user selection/press of a button (Col. 6, lines 36-40)
presenting the content item at a given moment in time that is determined based on the attachment of the content item to the broadcasting time line	index signal is not presented	EPG is displayed in response to a user selection/press of a button (Col. 6, lines 36-40)

As may be seen from the chart, neither of the asserted references teaches or suggests the claimed presentation of a content item.

More specifically and as explained previously, Nakatsuyama's index data (asserted as corresponding to the claimed content item) is not presented to a user during presentation of a program data signal (asserted as corresponding to the claimed broadcast media stream). None of the cited sections of Nakatsuyama teach that the index data is presented to a user. Rather, the cited portion at column 7, lines 63-65, teaches that the “[i]ndex data signal 34 contains the channel and time information personal receiver 40 uses to receive the user's preselected program(s) from program signal 36.” Since the receiver 40 uses the index data, not the user, there is no teaching or suggestion that the index data is presented to the user. Also, column 7, lines 10-18, discloses the general structure of the receiver 40 and how program data is presented, not index data. While index data is received, the only received signal that is presented is the requested program (column 2, lines 52-64). Rather, the index data merely contains information that the receiver 40 requires to correctly tune, receive, download, and output selected programs (column 5, lines 59-62). Accordingly, the index data is not accessed by, or presented to, a user. Instead, the broadcast system transmits the index data on the basis of the preselection of the user, and the user's receiver monitors and accesses the relevant index data to download the preselected program data. None of the cited teachings of Nakatsuyama discuss a portion of the index data signal that is presented during the presentation of the asserted program data signal. Therefore, the asserted index data is not presented in a user terminal, as claimed, and fails to correspond to the claimed content item.

The reliance on Billmaier's EPG fails to overcome the above deficiencies, since the EPG is at least not presented at a given moment in time that is determined based on the attachment of the EPG to a broadcasting time line. In contrast, the EPG is displayed in response to a user's request. Specifically, the EPG is displayed in response to a user's press of a designated “Radio EPG” button or in response to selection of a menu item or control displayed on a screen (Col. 6, lines 36-40). Since presentation of the EPG is dependent upon a user's selection/initiation, the timing of presentation of the EPG is not based on the

attachment of the EPG to a broadcasting time line or dependent on the broadcasting time line of a broadcast media stream. Since neither of the asserted references teaches presentation of a content item, as claimed, any combination of the asserted references must fail to correspond to at least these limitations. Without a presentation of correspondence to each of the claimed limitations, the § 103(a) rejections are improper.

In order to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); and moreover, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). *See, e.g.*, MPEP § 2143.03. The Examiner appears to have ignored certain claim limitations such as those directed to presenting a content item during presentation of a broadcast media stream at a time determined based on the attachment of the content item to a broadcasting time line of the media stream, which are not taught by either of the cited references. For example, Nakatsuyama does not teach any presentation of the asserted content item and Billmaier does not teach presenting the asserted content item at a time based on attachment to a broadcasting time line. Since neither of the asserted references teaches at least these limitations, any combination of Nakatsuyama and Billmaier must also fail to teach such limitations thereby rendering the rejections improper. Applicant accordingly requests that the rejections be withdrawn.

Moreover, no teachings from either reference have been asserted as corresponding to the limitations directed to sending the content item on a channel parallel to the channel used for broadcasting the broadcast media stream. Notably, the Office Action fails to acknowledge that these limitations are present in the claims. Without an assertion or presentation of correspondence to each of the claimed limitations, the § 103(a) rejections are improper and cannot be maintained. Applicant accordingly requests that each of the rejections be withdrawn.

Dependent Claims 2-4, 6, 8-10, 12-14, 16, 18-20, 22-24, and 26 depend from independent Claims 1, 11, and 21, respectively. Each of these dependent claims also stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the above-discussed

combination of Nakatsuyama and Billmaier. While Applicant does not acquiesce to any particular rejections to these dependent claims, including any assertions concerning descriptive material, obvious design choice and/or what may be otherwise well-known in the art, these rejections are moot in view of the remarks made in connection with the independent claims above. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited references. “If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious.” MPEP § 2143.03; *citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent Claims 2-4, 6, 8-10, 12-14, 16, 18-20, 22-24, and 26 are also patentable over the asserted combination of Nakatsuyama and Billmaier.

With respect to the § 103(a) rejections of dependent Claims 5, 7, 15, 17, and 25 based upon Nakatsuyama and Billmaier in view of U.S. Patent No. 6,975,835 to Lake *et al.* and U.S. Publication No. 2002/0105976 by Kelly *et al.*, respectively, Applicant respectfully traverses. As discussed above, Nakatsuyama and Billmaier fail to correspond to the limitations of independent Claims 1, 11, and 21. The further reliance on Lake *et al.* and Kelly *et al.* does not overcome the above-discussed deficiencies in Nakatsuyama and Billmaier as neither Lake *et al.* nor Kelly *et al.* have been shown to teach or suggest presentation of a content item as claimed. Thus, the asserted combinations of the teachings of Nakatsuyama and Billmaier with Lake *et al.* and Kelly *et al.*, respectively, do not teach each of the limitations of dependent Claims 5, 7, 15, 17, and 25, and the rejections should also be withdrawn.

It should be noted that Applicant does not acquiesce to the Examiner’s statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, inherent, obvious design choices, common knowledge at the time of Applicant’s invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner’s characterizations, conclusions, and rejections in future prosecution.

Claims 1, 11, and 21 have been amended to alter the wording of the claims. For example, the preambles of these claims have been shortened. These changes are not made

for any reasons related to patentability or to the asserted references and do not introduce new matter. These claims, with or without the changes, are believed to be patentable over the teachings of the asserted references for the reasons set forth above.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.152US) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC
8009 34th Avenue South, Suite 125
Minneapolis, MN 55425
952.854.2700

Date: November 7, 2008

By: /Erin M. Nichols/

Erin M. Nichols
Reg. No. 57,125